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7 Attorney for Plaintiff

8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON
11

12 ESTATE OF MARGARETTE E.
13 ECKSTEIN, by and through its
14 Personal Representative, PATRICIA K.
15 LUCKEY,

16 Plaintiff,

17 v.

18 LIFECARE CENTERS OF AMERICA,
19 INC., a Tennessee corporation; LIFE
20 CARE CENTER OF KENNEWICK, a
21 Washington nursing home;
22 KENNEWICK MEDICAL
23 INVESTORS, LLC, a Delaware
24 corporation; JOHN DOES 1-10
25 inclusive, jointly and severally liable,

26 Defendants.

NO. CV-09-5022-LRS

DECLARATION OF PATRICIA K.
LUCKEY IN OPPOSITION TO
MOTION TO COMPEL
ARBITRATION AND STAY
PROCEEDINGS

I, Patricia K. Luckey, do hereby declare:

1. I am the Administratrix-Personal Representative of the Estate of Margarette E. Eckstein and the Personal Representative in this case. Attached as Exhibit A is a true copy of my Letters of Administration, dated November 6, 2008. Margarette Eckstein was my mother. I am over the age of eighteen and

DECLARATION OF PATRICIA K. LUCKEY -1

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1 competent to testify herein. I have personal knowledge of the facts set forth in
2 this declaration.

3
4 2. My attorney in this case has informed me of the potential costs to
5 pursue this case in arbitration through the American Arbitration Association
6 (AAA). I cannot afford it. I reviewed the AAA website pages setting forth their
7 fee schedules, and I also reviewed the email from AAA dated 5/1/09 to my
8 attorney about the arbitrators' average fees. I am told that if this case proceeds
9 under the AAA it would be administered by the Commercial Arbitration Rules.
10 The Initial Filing and Case Service Fees for a claim of \$1M to \$5M would be
11 \$11,250, according to the AAA website. The average cost of one arbitrator
12 through the AAA is \$300/hr., so if the case required five days of arbitration, one
13 day for hearings, and two day for preparation and decision writing, the cost
14 would be \$19,200. If three arbitrators heard the case, as is called for in the
15 arbitration agreement with Life Care Center of Kennewick/America, the
16 arbitrators' fees could be \$57,600, and combined with the filing and case service
17 fees, it could cost \$68,850.

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19 3. I am self-employed as a psychiatric nurse and travel between
20 Spokane and the Tri-Cities. My net income in 2007 was around \$41,000.
21 Because of a prolonged illness in 2008, my net income in 2008 was negative,
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DECLARATION OF PATRICIA K. LUCKEY -2

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1 approximately --\$6,500. My income this year, if all goes well and I do not
2 become ill again, may be about what I made in 2007. I cannot afford the high
3 cost of proceeding with arbitration through the AAA. My brother, Gene Kinsey,
4 is retired and cannot afford to pay for the case. My only other sibling, my
5 brother John Kinsey, is disabled and cannot afford to pay for the case.
6

7
8 4. I also cannot afford to pay the cost of arbitration through some of
9 the other companies that provide this service. I reviewed the fee schedules for
10 the Washington Arbitration & Mediation Service and for Judicial Dispute
11 Resolution. Their filing fees are lower than AAA's, but their arbitrator fees look
12 high. WAMS arbitrators appear to charge on average \$350/hr. and JDR
13 averages \$400 per hour. This would make their overall cost about the same as
14 with AAA.
15

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17 5. The arbitration agreement signed by my brother, Gene Kinsey, with
18 Life Care Center of Kennewick/America says that "each side agrees to bear their
19 own attorney fees and costs." I have been told by my attorney that if we prevail
20 on the neglect claim in this lawsuit, then the law at RCW 74.34.200(3) says the
21 prevailing plaintiff *shall* be awarded attorney fees and costs for this claim,
22 including expert fees. I think it would be very unfair if this statutory right to
23 fees and costs was not upheld. I do not think I would have risked pursuing this
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1 case, even though I believe my mother was horribly neglected at LCC
2 Kennewick, if I knew that I would have to pay these fees and costs even if I won
3 the case.
4

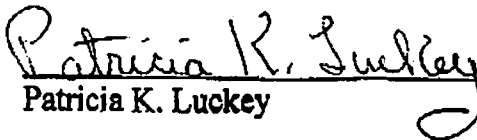
5 6. I ask the Judge to keep this case at the Court. But *if* the Court
6 decides to send this to arbitration, I ask the Court to order that it be heard by one
7 arbitrator, to keep the costs down, and that it be heard before an arbitrator that is
8 mutually agreeable to both sides. I also ask, if the case must be in arbitration,
9 that the defendants be ordered to pay for the cost of arbitration, and that for the
10 neglect claim the Court strike the provision that each side pays its own attorney
11 fees and costs.
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14 6. Finally, I want to address the issue of the Personal Representatives
15 of my mother's estate. My mother, Margarette Eckstein, died on August 21,
16 2006. She owned a small piece of real estate in Oregon, so her estate was
17 probated in Oregon. My former husband, Donald Webber, was the Personal
18 Representative for her estate in Oregon. Attached as Exhibit B is a true copy of
19 the Letters Testamentary appointing him on October 12, 2006, and the court
20 document closing the estate in Oregon on October 15, 2007. A probate was
21 opened in Washington because my mother was neglected and died in this state,
22 and I was appointed the Personal Representative. My brother, Gene Kinsey, has
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1 never been the Personal Representative or Administrator of my mother's estate
2 in Oregon or Washington.

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4 The foregoing statement is made under penalty of perjury under the laws
5 of the United States of America and the State of Washington and is true and
6 correct.

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8 Signed at Yakima, Washington this 1st day of May, 2009.

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11 Patricia K. Luckey
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DECLARATION OF PATRICIA K. LUCKEY -5

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Certificate of Service

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 1st day of May, 2009, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk will send e-mail notification of such filing to the following:

Carin A Marney

marneyc@lanepowell.com

kingp@lanepowell.com

Theodore A Sheffield

sheffieldt@lanepowell.com

lunda@lanepowell.com

docketing-SEA@lanepowell.com

By /s/ Rick Donker

Rick Donker

JOSIE DELVIN
BENTON COUNTY CLERK

NOV - 6 2008

FILED

CERTIFIED COPY

SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

IN THE MATTER OF THE ESTATE OF:)

NO. 08-4-00375-7

MARGARETTE E. ECKSTEIN,)

LETTERS OF ADMINISTRATION

Deceased.)

WHEREAS, heretofore Patricia K. Luckey was duly appointed Administratrix-Personal Representative of the estate of Margarette E. Eckstein, deceased, conditioned upon said Patricia K. Luckey filing her oath herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that said Patricia K. Luckey has duly qualified as such Administratrix-Personal Representative and is authorized to administer upon said estate according to law.

WITNESS my hand and the seal of this Court this 6th day of NOVEMBER, 2008.

JOSIE DELVIN
Benton County Clerk



By Mary Lou Rinderer
MARY LOU RINDERER, DEPUTY

STATE OF WASHINGTON)
) SS.
County of Benton)

I, JOSIE DELVIN, County Clerk and Ex-Officio Clerk of the Superior Court in Benton County, State of Washington, by and through a deputy clerk, certify that the above is a true and correct copy of the LETTERS OF ADMINISTRATION in the above entitled case which were filed of record on the 6th day of November, 2008. I further certify that these LETTERS are now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court, this 7th day of November 2008.

JOSIE DELVIN
Benton County Clerk

By Mary Lou Rinderer
Deputy

Exhibit A

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FILED

10:55 A M

OCT 12 2006

STATE OF OREGON

Malheur County Court

Case No. 5357

DEBORAH R. DE LONG County Clerk

By Deborah R. DeLong Deputy

LETTERS TESTAMENTARY

Estate of: **Margarette E. Eckstein**

Deceased

THIS CERTIFIES that the Will of **Margarette E. Eckstein**, deceased, has been proved and **Donald E. Webber** is the Personal Representative of the Will and estate of the decedent.

October 12, 2006.

COUNTY CLERK
Deborah R. DeLong

Deborah R. DeLong

I certify that I compared the above copy of Letters Testamentary to the original that is on file and in my custody and the above copy of Letters Testamentary is a correct copy.

I further certify that the original Letters Testamentary are still in full force and effect.

DATE: October 12, 2006

COUNTY COURT CLERK

By Deborah R. DeLong

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Exhibit B

FILED
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OCT 16 2007

DEBORAH R. DE LONG County Clerk

By

Daphne

IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR

In the Matter of the Estate of)	Case No. Case No. 5357
)	
MARGARETTE E. ECKSTEIN,)	GENERAL JUDGMENT DISCHARGING
Deceased.)	PERSONAL REPRESENTATIVE AND
)	CLOSING ESTATE

IT APPEARING to the Court that pursuant to an order heretofore entered, the Personal Representative has paid all claims and expenses of administration and has distributed the remaining property in accordance with the order of distribution and receipts from two of the distributees are filed herein, as set forth in his Motion for Entry of Final Judgment on file herein; and

IT FURTHER APPEARING that the Personal Representative has performed all of the acts required and that this estate has been fully administered,

IT IS HEREBY ORDERED AND ADJUDGED that the Motion for Entry of Final Judgment is approved, the Personal Representative is discharged, and the estate is closed.

DATED October 15, 2007.

DANIEL P. JOYCE

Dan P. Joyce, County Court Judge

SUBMITTED BY:
Michael B. Collins, SB #80195
of Attorneys for Personal Representative
P. O. Box 1457
Pendleton, OR 97801
Tel. No. (541) 276-3320

PERSONAL REPRESENTATIVE:
Donald E. Webber
517 S. Harrison
Kennewick, WA 99336

GENERAL JUDGMENT DISCHARGING PERSONAL REPRESENTATIVE
AND CLOSING ESTATE - Case No. 5357

Page

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